United Nations S/2003/308

Security Council

Distr.: General
12 March 2003

Original: English

Letter dated 7 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 September 2002 (S/2002/1014).

The Counter-Terrorism Committee has received the attached supplementary report from Nigeria submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-28053 (E) 180303

Annex to the letter dated 7 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

Note verbale dated 5 March 2003 from the Permanent Mission of Nigeria to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Federal Republic of Nigeria to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee of the Security Council and, with reference to the latter's letter of 30 August 2002, has the honour to forward herewith Nigeria's further clarification/information on a number of preliminary comments/questions raised by the Committee on the report submitted by the Government of Nigeria pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

Enclosure

Letter dated 12 September 2002 from the Attorney-General of the Federation and Minister of Justice of Nigeria addressed to the Minister for Foreign Affairs of Nigeria

Report of Nigeria on the implementation of Security Council resolution 1373 (2001)

I am directed to refer to your letter No. FB.32/I dated 18th June 2002 on the above mentioned subject matter and to state that our comments (response) to the letter of the Counter Terrorism Committee (CTC) of the United Nations Security Council dated 21st May 2002 is as follows:-

(A) Sub-paragraph 1 (a)

The penalties that apply if a bank fails to report transactions of a sum of over half a million naira is provided in section 28 (5) of Decree No. 24, Central Bank of Nigeria Decree 1991 which States:-
"Where any person or institution fails to comply with any guideline issued under paragraph (b) of section (1) of this section, he shall be guilty of an offence under this Decree and liable on conviction to imprisonment not exceeding three years or to a time not less than N50,000.00 or more than N100,000.00 or to both such imprisonment and fine. Under section 17 of the Money Laundering Act. Decree No. 3 of 1995, a bank (body corporate) convicted of an offence may have all its properties and assets forfeited to the Federal Government.
Nigeria have provisions for regulating informal banking networks if they are registered Unit Trust Schemes. But the informal banking

system (Hamala) operating in the Country is not subjected to regulations since they are based or operate on personal arrangements. Natural or legal persons other than banks (e.g. attorneys-notaries) are under no legal obligation to report suspicious transactions that might be linked to terrorist activities to the public authorities.

Decree No. 3 Money Laundering Decree 1995 consists of 3 parts. Part I deals with Prevention of money Laundering and is made up of thirteen (13) sections dealing with the following:-

1. Limitation of the amount of cash payment.
2. Duty to report international transfers of funds and securities.
3. Regulation of over – the counter exchange transaction.
4. Duties incumbent on casinos.
5. Identification of customers.
6. Special surveillance of certain transactions.
7. Preservation of records.
8. Communication of information.
9. Arousing awareness among employees of financial institutions.
10. Mandatory disclosure by financial institutions.
11. Liability of directors etc of financial institutions.
12. Surveillance of bank accounts etc; and
13. Determination of flow transactions, etc.

Part II deals with offences under the Decree and trial of same namely:-

14. Money Laundering Offences.
15. Other Offences.
16. Conspiracy, aiding, etc.
17. Offences by bodies corporate; and
18. Trial of Offences.

Part III is on Miscellaneous and contains provisions relating to the following:-

19. Power to demand and obtain records etc.
20. Obstruction of the Agency or authorized officers.
21. Protection against liability.
22. Repeal of section 13 of the National Drug Law Enforcement Agency Decree 1959 No.48 and
23. Interpretation.

The Money Laundering Act, therefore, contains provisions which criminalize Money – Laundering and prescribes penalties too. Offenders are liable to imprisonment for a term of 25 years.

(B) Sub-paragraph 1 (b)

Exchange Control (Anti sabotage) Act has been repealed. It was repealed by Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree No. 17 of 1995. However section 13 of the National Drug Law Enforcement Agency Act Cap.253 Laws of the Federation 1990 criminalise Laundering of funds obtained through unlawful activity and imposes penalty and forfeiture. See also cap 62 (33) on freezing order on banks. Nigeria will criminalise the financing of the activities listed in sub-paragraph 1(b) of the Resolution in cases not covered by those two Acts by domestic legislation towards implementation of the United Nations Convention on the suppression of Terrorism. The Anti-Terrorism Act when enacted will contain measures to prevent or punish acts committed by terrorist organizations operating from Nigeria, it should however be emphasised that at the moment there is no reported case of terrorist organization, operating from Nigeria.

(C) SUB-PARAGRAPH 1(c)

Under NDLEA ACT Capt 253 Laws of the Federation 1990 section 3 (c) the Agency have responsibility for "adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from drugs related offences or properties whose value corresponds to such proceeds." Section 4(1) and (2) deals with the federal powers of the Agency. Note-No time frame within which the Agency is required to decide. It is to be noted that all the assets and properties of any person convicted of an offence under the Act. i.e. cap. 253 are liable to forfeiture to the Federal Government. See section 18 to 25 of the Act. Where a person is arrested for an offence under the Act, the Agency shall immediately trace and attach all the assets and properties of the person and shall thereafter cause to be obtained an interim attachment order by the Tribunal. This means that on arrest, the assets, and properties of the arrested person shall be traced and attached immediately; such attachment would be validated later by obtaining order from the Tribunal see section 25.

Funds can be frozen in Nigeria on the request of foreign authorities where there exists between both countries a mutual legal assistance

treaty in criminal or civil matters, which specify or give details of such arrangement.

(D) SUB-PARAGRAPH 1(d)

The Central Bank of Nigerian has enhanced its monitoring activities on all financial transactions carried out by commercial banks by regular receipt of reports on financial transactions carried out by commercial banks and also through its supervisory role under section 30 of the Banks and other Financial Institutions Act 1991 No. 25.

(E) SUB-PARAGRAPH 2(a)

The penalties provided for in Nigeria's criminal legislation for the recruitment of members of terrorist group, are as contained in section 6 (6) of the Public Order Act Cap 382 Laws of the Federation 1990. The penalty is a fine of N5,000.00 or imprisonment for 2 years or both such fine and imprisonment in the case of a person who is proved to have taken part in the organization or management of an association or in organizing, tracing, or equipping any person referred to in paragraph (a) and (b) of subsection 1 of section 6. In the case of a person who is proved to have undertaken or been engaged in being organized, trained or equipped, be liable to a fine of N1,000 or imprisonment for six months or to both such fine and imprisonment.
Weapons, which fall under the category of "Prohibited firearms", are as contained in part 1 of the schedule to the Firearms Act. CAP 146 these are:-

1. Artillery
2. Apparatus for the discharge of any explosives or gas diffusing projectile
3. Rocket weapons
4. Bombs and grenade
5. Machine guns and machine pistols
6. Military Rifles, namely those of calibers of 62 mm, 9mm, 300inches and 30.3 inches
7. Revolvers and pistols whether rifled or unrifled (including flint-lock pistols and cap pistols) and
8. Any other firearm not specified in part II or part III of this schedule.

The prohibition of the acquisition of firearms and explosives are implemented by the provision of sanctions under section 28 of the

Firearms Act, which stipulates a sentence of up to 10 years for contravention of the Act.

The measures Nigeria have to prevent terrorists from obtaining weapons in the country is the Firearms Act, which prohibits possession or importation of arms and ammunition. Sections 18 to 22 of the Act deals with and control the importation and exportation of weapons.

The legislative measure in place to prevent entities and individuals from recruiting, collecting funds or soliciting other forms of support for unlawful activities is the Public Order Act referred to above particularly section 6 thereof; another legislative measure in section 62 to 88 of the criminal code Act cap. 77 Law of the Federation 1990, which prohibits unlawful societies and provides penalties of up to 7 years on conviction.

It is to be noted that the proposed Anti-Terrorist Act to be presented to the National Assembly for enactment will take cognizance of and remedy any shortcoming, lapses of the Public Order Act taking into consideration the country's obligations in the enforcement of International Treaties/Convention, which Nigeria has recently ratified.

(F) Sub-paragraph 2 (c) and (d)

The provisions of the Extradition Act relevant for this purpose are as contained in sections 1, 4, and 5, 6, 7, 8, 9, 10 11, 12, 13, and 14 of the Extradition Act Cap. 125 Laws of the Federation 1990.

(G) Sub-paragraph 2 (e)

The National Assembly is still considering the bill on Anti-Terrorism, Economic and Financial Crimes Act. It is, therefore, premature to report on the provisions especially as it is not clear whether the National Assembly will pass the bill as it is or modify its provisions. Nigerian Courts have no jurisdiction or competence to deal with criminal acts committed outside Nigeria either by its citizen or person habitually resident in Nigeria; ditto a foreigner who is currently in Nigeria where the crime is committed outside Nigeria.

(H) Sub-paragraph 2 (f)

There is no specific legal timeframe within which a request for judicial assistance in criminal investigation or criminal proceedings has to be met. Each request is treated on its own merit and in accordance with the urgency attached to each particular case. However, request are generally met and responded to within a reasonable time.

(I) Sub-paragraph 2 (g)

To be referred to the immigration at the Ministry of Internal Affairs for detailed explanation.

(J) Sub-paragraph 3 (a)

To be referred to the Nigerian Intelligence Agency for detailed explanation.

(K) Sub-paragraph 3 (c)

Nigeria has entered into bilateral agreements on mutual legal Assistance and Extradition with a number of Countries amongst which are the United Kingdom, South Africa, United States of America, Thailand, Benin, Ghana, Togo, Spain, Ireland and Italy.

(L) Sub-paragraph 3 (e)

The offences set forth in the relevant international conventions and protocols relating to terrorism are included as extraditable offences in bilateral treaties to which Nigeria is a party.

(M) 3 (f and (g)

The principal law in force on immigration issue generally is the Immigration Act CAP. 171 Laws of th e Federation of Nigeria. The Act has two (2) subsidiary Regulations to wit: Immigration Regulation and Immigration (Control of Aliens) Regulations. The procedure for grant of refugee status is governed by the aforesaid Act and Regulations.

Claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

2. You may wish to transmit the above response to the United Nations Counter – Terrorism Committee after clarification of sub-paragraphs 2 (g) and 3(a) from the Immigration Department of the Ministry of Internal Affairs and the Nigeria Intelligence Agency respectively.

(*Signed*) J. **Balogun**
for the Honourable Attorney-General
of the Federation and Minister of Justice